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SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1963

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No. 691

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RALPH NEILL, ET AL., *Appellants*

vs.

ROBERT J. COOK, ET AL., *Appellees*

* * * * * *

Statement of Appellees Opposing Jurisdiction and Motion To Dismiss or Affirm

* * * * * *

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OCTOBER TERM, 1963

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RALPH NEILL, ET AL., *Appellants*

vs.

ROBERT J. COOK. ET AL., *Appellees*

* * * * * *

Statement of Appellees Opposing Jurisdiction

and

Motion To Dismiss or Affirm

* * * * * *

Come now Appellees and file their Statement in opposition to Appellants' Statement as to Jurisdiction and hereby move the Court to dismiss the appeal herein or affirm the decision and judgment of the Supreme Court of Texas, from which decision and judgment the said appeal is taken.

Appellants Were Not Deprived of Due Process of Law

As shown by Appellants' Statement as to Jurisdiction, the actions of which the Appellants complain are the judgments of the Texas courts affirming orders passed by the County School Trustees of Howard County, State of Texas, on May 4, 1960, annexing the Center Point Common School Dist. No. 7 and the Gay Hill Common

Consolidated School Dist. No. 6, both in Howard County, Texas, to the Big Spring Independent School District in Howard County, Texas, under the provisions of Article 2922a, Vernon's Texas Civil Statutes.

These orders clearly concerned the formation of school districts under the general laws of the State of Texas. Article 7, Section 3, of the Texas Constitution (appearing in Volume 2, page 383, Vernon's Constitution of the State of Texas, 1955 Edition), authorizes the Legislature to "provide for the formation of school district by general laws."

On the basis of this Constitutional provision it has been the determination of the Texas courts that there are no vested rights in respect to the territorial boundaries of school districts as originally established and that it is within the province and power of the Legislature to enact statutes providing for the creation or change of the territorial boundaries of school districts without consent of or notice to trustees of such school districts, through the instrumentality of county boards of school trustees. *Prosper Independent School Dist.* v. *County School Trustees,* 58 S. W. 2d 5 (Tex. Com. App.)

It has been the consistent holding of the Texas courts that such statutes, including Article 2922a, do not violate the Constitution of the State of Texas, nor for that matter the due process clauses of the Constitution of the United States. *Stinson* v. *Graham,* 286 S. W. 264 (Tex. Civ. App., writ refused); *Phillips* v. *Minden Independent School Dist.,* 152 S. W. 2d 1114 (Tex. Civ. App.); *Ivey* v. *Keeling,* 15 S. W. 2d 1097 (Tex. Civ. App.), appeal dismissed, 281 U. S. 699, 50 S. Ct. 352, 74L. Ed. 1126.

Indeed, it has been the unanimous decision of the Texas courts since 1926, in response to all attacks for whatever reason, that Article 2922a does not violate any

provision of the Texas Constitution. *Henderson* v. *Miller,* 286 S. W. 501 (Tex. Civ. App., writ refused); *State* ex rel. *Childress* v. *School Trustees of Shelby County,* 150 Tex. 238, 239 S. W. 2d 777; *La Parita Independent School Dist.* v. *School Trustees of Atascosa County,* 281 S. W. 2d 123 (Tex. Civ. App., writ refused, N. R. E.); *Adkins* v. *Rogers,* 303 S. W. 2d 820 (Tex. Civ. App., writ refused, N. R. E.); *McPhail* v. *Tax Collector of Van Zandt County,* 280 S. W. 260 (Tex. Civ. App., writ refused); *County School Board of Angelina County* v. *Homer Common School Dist.,* 291 S. W. 268 (Tex. Civ. App.); *Lee* v. *Leonard Independent School Dist.,* 24 S. W. 2d 449 (Tex. Civ. App., writ refused); *Butman* v. *Jones,* 37 S. W. 2d 840 (Tex. Civ. App., writ refused); *Young County Board of School Trustees* v. *Bailey,* 61 S. W. 2d 130 (Tex. Civ. App.); *County Board of School Trustees of Hale County* v. *Mayfield Common School Dist. No. 22,* 140 S. W. 2d 956 (Tex. Civ. App., writ dismissed, judgment correct); *Wise Common School Dist. No. 2 of Castro County* v. *Castro County School Trustees,* 141 S. W. 2d 1028 (Tex. Civ. App., writ refused).

Decisions of the Supreme Court of the State as to the question of any conflict between the statute and the Constitution of that State in which the validity of the statute is sustained are binding, so that the decisions cited in the preceding paragraph with respect to the validity of Article 2922a under the Texas Constitution have settled that question. *Merchants' & Manufacturers' National Bank* v. *Commonwealth of Pennsylvania,* 167 U. S. 461, 17 S. Ct. 829, 42 L. Ed. 236; *Michigan Central Railroad Company* v. *Powers,* 201 U. S. 245, 26 S. Ct. 459, 50 L. Ed. 744.

It has long been held that municipal corporations are creatures of the State for exercise of the governmental powers entrusted to them and that it rests within the

absolute discretion of the State to determine the number, nature and duration of the powers conferred upon them; that the State may at its pleasure modify or withdraw all the powers granted, may take the property of such corporations without compensation and hold it or vest it in other agencies, expand or contract the territory of the area, unite the whole or any part of such municipal corporation with some other municipality, or even destroy such corporation, and that such may be done without the consent of the citizens thereof or even against their protest; and that although the inhabitants or property owners of such corporations may by such changes suffer inconvenience and their property be lessened in value by the burden of increased taxation, or for other reasons, such inhabitants have no right in the unaltered or continued existence of the corporation or its powers, and that there is nothing in the Federal Constitution which protects the inhabitants from these consequences; that the power is in the State and those who legislate for the State are alone responsible for any unjust or oppressive exercise of it. *Hunter* v. *City of Pittsburgh,* 207 U. S. 161, 28 S. Ct. 40, 52 L. Ed. 151; *Kelly v. City of Pittsburgh,* 104 U. S. 78, 26 L. Ed. 658.

As to school districts this court has held that there is a similar power in the Legislature, an absolute power to make and change subordinate municipalities, and specifically to create a school district out of other school districts and give such school district title to the school properties within the boundaries of such newly created district without the approval and consent of the inhabitants thereof. *Attorney General of the State of Michigan* ex rel. *Kies* v. *Lowrey,* 199 N. S. 233, 26 S. Ct. 27, 50 L. Ed. 167.

It has been decided by the courts of Texas that the Legislature under Constitutional authority has vested in

the boards of county school trustees of each county the discretion to determine whether annexations should be made under the provisions of Article 2922a. *Board of Dist. Trustees of Lanier Common School Dist. No.* 49, *Cass County,* v. *Board of County School Trustees of Cass County,* 232 S. W. 2d 100 (Tex. Civ. App., writ refused, N. R. E.); *La Parita Independent School Dist.* v. *School Trustees of Atascosa County,* 281 S. W. 2d 123 (Tex. Civ. App., writ refused, N. R. E.); *Adkins* v. *Rogers,* 303 S. W. 2d 820 (Tex. Civ. App., writ refused, N. R. E.); *District Trustees of Campbellton Consolidated Common School Dist. No.* 16 v. *Pleasanton Independent School Dist.,* 362 S. W. 2d 122 (Tex. Civ. App., writ refused, N. R. E.).

However, in addition, those who may be dissatisfied with the actions of a board of county school trustees taken under Article 2922a are given the right of an appeal either to an administrative agency or to the courts of Texas for a determination whether the action taken by the county school trustees has been unlawful, arbitrary, or an abuse of discretion, as a matter of statutory right. *Cook* v. *Neill,* 352 S. W. 2d 258 (Tex. Sup.).

Therefore, there is presented no substantial Federal question on this alleged issue.

Annexation Orders Have Been Validated By Legislature

As pointed out on page 2 of Appellants' Statement as to Jurisdiction the Supreme Court of Texas overruled a motion for rehearing in this cause on July 31, 1963. At that time the decision of the Supreme Court of Texas became final, there was no proceeding pending, and mandates went back to the respective courts to enforce the

decision of the Texas Supreme Court. Notice of Appeal to this court was not filed until October 28, 1963.

On August 23, 1963, Acts 1963, 58th Texas Legislature, page 836, Chapter 318 became effective. This Act is codified and printed as Article 2815g-57, Vernon's Texas Civil Statutes, pages 263-266 of the 1963 Cumulative Annual Pocket Part to Volume 8.

The second paragraph of Section 1 of Article 2815g-57 reads as follows:

> "All acts of the county boards of trustees of any and all counties in rearranging, consolidating, grouping, annexing, changing, detaching and attaching of territory, or subdividing any and all such school districts, or increasing or decreasing the area thereof, or abolishing school districts in any school district of any kind, or in creating new districts out of parts of existing districts or otherwise, and all acts of the governing bodies of any such municipalities in annexing territories to such municipally controlled school districts, are hereby in all things validated."

The only exception to the applicability of this act is contained in Section 4 which provides that the action not apply to litigation pending in any court of competent jurisdiction in this State on the effective date thereof nor to proceedings pending before the County Boards of School Trustees, the State Commissioner of Education, or the State Board of Education on the effective date of the act, or to any district which has been declared invalid by a competent court of jurisdiction. As we have shown, there were no such proceedings pending on August 23, 1963, in any court of this State, nor is there any showing

that there were any administrative proceedings pending questioning the validity of the annexation orders on such date since the opinion of the Texas Supreme Court in *Cook* v. *Neill,* 352 S. W. 2d 258, demonstrates that all administrative appeals have been abandoned by the contesting parties with respect to these annexation orders.

The power of the Legislature to so validate these annexations is shown in *Hodges* v. *Snyder,* 261 U. S. 600, 43 S. Ct. 435, 67 L. Ed. 819.

Therefore, there remains no substantial Federal question concerning the validity of the annexation orders attacked by Appellants herein.

The Appeal Herein Is Without Merit, There Being No Substantial Federal Question Involved

Appellees contend that the record in this case discloses no substantial Federal question and, therefore, this Court is without jurisdiction of this cause. This appears from *Ivey* v. *Keeling,* 281 U. S. 699, 50 S. Ct. 352, 74 L. Ed. 1126, involving the validity of the same Article 2922a involved here and similar orders to those involved here.

It is therefore submitted that Appellees' motion herein to dismiss the appeal or affirm the judgment of the Supreme Court of Texas should be granted.

Wherefore, Appellees pray that this Court refuse to note jurisdiction in this cause and that Appellees' motion to dismiss the appeal or affirm the judgment be granted.

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Proof of Service

I, Guilford L. Jones, Attorney of Record for Appellees, depose and say that on the 17th day of January, 1964, I served a copy of the foregoing statement of Appellees opposing jurisdiction and motion to dismiss or affirm on Ralph Neill, et al, Appellants herein by depositing same in the United States mail box with first class postage prepaid addressed to Counsel of Record at their post office addresses as follows: A. B. Culbertson, 4235 E. Lancaster, Fort Worth, Texas; Simon, Crowley, Wright, Ratliff and Miller and Wayne A. Rohne, 12th Floor Sinclair Building, Fort Worth, Texas, Attorneys for Appellants.

Guilford L. Jones

SUBSCRIBED AND SWORN TO before me at Big Spring, Texas, this 17th day of January, 1964.

Donna Shelley
Notary Public, Howard County, Texas
My Commission expires June 1, 1965.